

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BILLY M. SMITH,

:

Plaintiff,

Case No. 3:10-cv-448

-vs-

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

MONTGOMERY COUNTY
SHERIFF'S OFFICE, et al.,

Defendants.

ORDER

This case is before the Court on remand from the United States Court of Appeals for the Sixth Circuit (*Smith v. Montgomery County Sheriff's Office*, Case No. 13-3164, Order of March 26, 2013, copy at Doc. No. 153). That Court decided that the Magistrate Judge's Decision and Deficiency Order (Doc. No. 149) was ultra vires and remanded the case for the District Court to decide whether to grant Plaintiff's Motion for Extension of Time to File Appeal (Doc. No. 147). The Court was directed to allow Defendants an opportunity to respond to that Motion.

While the Court of Appeals has decided that a Magistrate Judge may not rule on a post-judgment motion to extend the time for appeal, nothing in the Sixth Circuit's Order purports to prevent a District Court from referring a post-judgment motion to a Magistrate Judge for a report and recommendations. Because Plaintiff is proceeding *pro se*, this case has been, from the time it was filed, referred to the undersigned Magistrate Judge under the Dayton General Order of Assignment and Reference.

Accordingly, it is hereby ORDERED:

1. That portion of the Decision and Deficiency Order of February 11, 2013, granting

Plaintiff's Motion for Extension of Time to Appeal is VACATED;

2. The Clerk shall restore that Motion to the pending motions list in the CM/ECF system;
and

3. Defendants shall respond to the Motion for Extension of Time not later than April 22, 2013. (Plaintiff will then be permitted the standard time allowed under S. D. Ohio Civ. R. 7.2 – 17 days – to file a reply in support.)

March 28, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge